

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM PATRICK GARCIA,

No. 2:21-cv-0875 AC P

Plaintiff,

ORDER AND FINDINGS AND
RECOMMENDATIONS

v.

T. PADGETT, et al.,

Defendants.

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. On December 21, 2023, the court screened the complaint and found that plaintiff may proceed against defendant Padgett on an Eighth Amendment deliberate indifference claim but that the remaining claims against Padgett and the other defendants were insufficient. ECF No. 19. Plaintiff was given the options of amending the complaint or proceeding immediately on his cognizable Eighth Amendment claim against defendant Padgett. Id. at 9. He was further advised that if he failed to notify the court how he wanted to proceed, the court would assume that he was choosing to proceed on the complaint as screened and would recommend dismissal without prejudice of the remaining claims and defendants. Id. The time for plaintiff to notify the court as to how he wishes to proceed has now passed, and plaintiff has not made an election or otherwise responded to the order.

////

Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court shall randomly assign a United States District Judge to this action.

IT IS FURTHER RECOMMENDED that, for the reasons explained in the screening order (ECF No. 19) and incorporated by reference here:

1. The claims against defendants Vanni, Geringer, Covello, Tyler, Holmes, Stacy, Pedersen, Mulford, Rhode, Santos, Naguchi, Rodriguez de Ayala, Sackett, and Kassis be dismissed without prejudice;
2. The Clerk of Court terminate these defendants from the docket; and
3. The First Amendment retaliation, due process, and conspiracy claims against defendant Padgett be dismissed without prejudice.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days after being served with these findings and recommendations, plaintiff may file written objections with the court. Such a document should be captioned “Objections to Magistrate Judges Findings and Recommendations.” Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: December 19, 2024

Allison Claire
ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE